

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0178, In the Matter of Paula Martin-Amirault and Michael Randall Martin, the court on February 2, 2005, issued the following order:

The petitioner, Paula Martin-Amirault, appeals a decision of the superior court finding the parties' prenuptial agreement unconscionable and declining to enforce it. We affirm.

Ordinary principles of contract law govern antenuptial agreements. Yannalfo v. Yannalfo, 147 N.H. 597, 599 (2002). An antenuptial agreement is valid unless the party seeking its invalidation proves that: (1) the agreement was obtained through fraud, duress or mistake, or through misrepresentation or nondisclosure of a material fact; (2) the agreement is unconscionable; or (3) the facts and circumstances have so changed since the agreement was executed as to make the agreement unenforceable. *Id.* In this case, the trial court found that the terms of the agreement are unconscionable.

The petitioner first argues that the trial court erred by relying upon parol evidence in making its findings, citing Parkhurst v. Gibson (Parkhurst), 133 N.H. 57, 62 (1990). There we held that our task in interpreting an antenuptial agreement is to ascertain the parties' intent as expressed in the written agreement. The parol evidence rule cautions us that, absent fraud, duress, mutual mistake or ambiguity, we must restrict our search for that intent to the words of the agreement.

In this case, the trial court did not use parol evidence to interpret the antenuptial agreement. Rather, it looked to the circumstances surrounding the making of the agreement in considering whether the agreement is unconscionable. We find no violation of the parol evidence rule. *Cf. Restatement (Second) of Contracts* § 214 comment *c* at 134 (1981) (parol evidence admissible to show that what appears to be a complete and binding integrated agreement is actually forgery, joke, sham, agreement without consideration, or voidable for fraud, duress, mistake or the like, or illegal).

The petitioner also argues that the court erred in finding that the agreement is unconscionable. As the trial court correctly noted, many of the terms of the agreement are bizarre, including the requirement that the respondent immediately pay alimony to the wife throughout her lifetime whether or not the parties ever divorced. Based upon these provisions and the circumstances surrounding the execution of the agreement, the court found that

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the agreement was entered into for the sole purpose of affecting a then-pending bankruptcy proceeding, and that the parties “never intended to utilize or rely upon the agreement in any divorce proceedings.” To enforce this agreement, in light of the contrary intent of the parties at the time the agreement was made, would clearly be unconscionable.

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox
Clerk**